

STATE OF ARKANSAS  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
OFFICE OF STATE PROCUREMENT

**RULES AND REGULATIONS**  
**IMPLEMENTING GOVERNOR'S EXECUTIVE ORDER 98-04**  
**AND ACT 34 OF 1999**

Pursuant to the authority vested in the Department of Finance and Administration by Ark. Code Ann. §§ 19-11-217, 19-11-715, 21-5-207, and 25-8-102, and by Act 34 of the 1999 Acts of the Arkansas General Assembly, and in the Chief Fiscal Officer of the State by Ark. Code Ann. § 19-4-104, and by the promulgation of Executive Order 98-04, and in compliance with Ark. Code Ann. § 25-15-204 and Ark. Code Ann. § 10-3-309, the Director of the Department of Finance and Administration, with the approval of the Governor, does hereby promulgate the following rules and regulations for the enforcement and administration of Executive Order 98-04 and of Act 34 of the 1999 Acts of the Arkansas General Assembly, to take effect as amended, on January 1, 2003.

**1. DEFINITIONS** – For purposes of these regulations, unless otherwise required by the context, the following definitions apply:

A. AGENCY or STATE AGENCY shall mean every agency, board, commission, department, division, institution, and other office of state government located within the executive branch of government and under the control of the Governor, for purposes of Executive Order 98-04. For purposes of Act 34 of 1999, State Agency is defined to also include an office of state government located within the legislative and judicial branches of government. Agency shall also include state-supported colleges and universities.

B. BOARD OR COMMISSION MEMBER shall mean any person who is an appointed member of a state board or commission, whether appointed by a member of the legislative, executive, or judicial branches of government, or otherwise.

C. COMPETITIVE SEALED BID shall mean a method of procurement in which the purchase price exceeds twenty-five thousand dollars (\$25,000). It requires issuance of an Invitation to Bid, public notice, public opening at a pre-designated time and place, and award to the lowest responsive and responsible bidder.

D. CONSTITUTIONAL OFFICER shall mean Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Attorney General, Commissioner of State Lands, and Auditor of State, for purposes of Executive Order 98-04. For purposes of Act 34 of 1999, “constitutional officer” shall include, in addition to the foregoing, members of the Arkansas House of Representatives and members of the Arkansas Senate. For purposes of clarity, when the Regulations refer to “constitutional officer” the intent is to refer only to Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Attorney General, Commissioner of State Lands, and Auditor of State.

When the intent is to also include members of the General Assembly, the Regulation shall state “constitutional officer, including members of the General Assembly.”

E. CONTRACT shall mean any agreement entered into by and between a state agency and an individual or entity pursuant to which the agency agrees to purchase or lease tangible personal property, real property, or services, or any agreement for the disposal of commodities and services. Contract includes, but is not limited to, awards and notices of award; contracts of a fixed price, cost, or incentive type; contracts providing for the issuance of job or task orders, leases, lease purchase agreements, letter contracts, purchase orders, and professional or consultant services contracts. Contract also includes supplemental agreements with respect to any of these categories.

F. CONTRACT LABOR shall mean temporary personnel hired through a private employment agency to meet unanticipated staffing needs. The duration of these assignments cannot exceed six (6) consecutive weeks per calendar quarter. Expenses for these services are paid from the agency/institution maintenance and operations budget. Temporary personnel hired in this manner are not state employees.

G. CONTRACTOR shall mean any individual or entity that enters into a contract with a state agency.

H. EMERGENCY PROCUREMENT means the acquisition of commodities or services which, if not immediately initiated, will endanger human life or health, state property, or the functional capacity of a state agency.

I. ENTITY shall mean any type of business organization other than an individual, including, but not limited to, a corporation, partnership, limited liability company, or joint venture.

J. FORMER BOARD OR COMMISSION MEMBER shall mean any person who was a board or commission member within two years prior to entering into any contract with a state agency.

K. FORMER CONSTITUTIONAL OFFICER shall mean any person who was a Constitutional Officer within two years prior to entering into any contract with a state agency.

L. FORMER MEMBER OF THE GENERAL ASSEMBLY shall mean any person who was a member of the General Assembly within two years prior to entering into any contract with a state agency.

M. FORMER STATE EMPLOYEE shall mean any person who was a state employee of any state agency within two years prior to entering into any contract a state agency.

N. GRANTS shall mean all appropriations made by the General Assembly from state, federal, or other moneys for educational assistance, welfare grants, rehabilitation services, aid to counties and municipalities, and to all other special appropriations which have for their purpose the appropriating of state, federal, or other moneys for public benefits; provided, however, grants shall not include scholarships to institutions of higher education. For purposes of these Regulations, a discretionary grant is a grant in which the

recipient of the grant funds or the formula for the grant award is not specifically stated in the legislation authorizing the grant.

O. IMMEDIATE FAMILY MEMBER shall mean an individual's spouse, children of that individual or his or her spouse, and brothers, sisters, or parents of the individual or his or her spouse.

P. INDIVIDUAL shall mean one particular person.

Q. JOB CREATED OR ENHANCED BY LEGISLATION shall mean any regular salary or extra-help position created by legislation or any position previously created by legislation for which the salary was increased in excess of fifteen percent (15%) authorized by legislative action or was upgraded or reclassified.

R. LEASE shall mean a contract by which an individual or entity conveys to another an interest in real property or tangible personal property for a designated period of time for a specified rent or other compensation. Lease shall include transactions in which a transfer of title or possession of tangible personal property occurs, such as a license transaction.

S. LEASE-PURCHASE AGREEMENT shall mean a lease containing a purchase option providing that the lessee's periodic payments, or parts thereof, may be applied to the rent required and to the payments required to purchase the property, upon lessee exercising the purchase option; a conditional sales contract.

T. MEMBERS OF THE GENERAL ASSEMBLY shall mean member(s) of the Arkansas House of Representative or of the Arkansas Senate. The term "Legislator," when used in the Regulations, shall have the same meaning.

U. POSITION OF CONTROL shall mean the possession, direct or indirect, of the power to direct or cause the direction of the purchasing policies of an entity, or the power to exercise a deciding influence over the management of the entity.

V. PURCHASE AGREEMENT shall mean any written instrument evidencing the agreement of an agency to purchase tangible personal property or services from a vendor.

W. REQUEST FOR PROPOSAL shall mean a method of procurement which requires issuance of a Request for Proposal, public notice, public opening at a pre-designated time and place, and evaluation of proposals to determine the relative abilities of bidders to perform, including the degree of technical or professional experience, and price is not the only consideration in selection of the bidder.

X. SOLE SOURCE shall mean a procurement or contractual agreement which by virtue of the performance specifications is available from a single source.

STATE AGENCY INTERNAL AUDIT OFFICE shall mean the Office of Internal Audit created by Executive Order 99-08 within the Department of Finance and Administration to promote accountability, integrity, and efficiency in the operation of the Executive Branch.

This Office shall be responsible for the examination of records that agencies are required to maintain pursuant to Executive Order 98-04 and these Regulations.

Z. STATE EMPLOYEE shall mean any employee of any state agency employed in a regular salary position or extra-help position not to include contract labor.

AA. SUBCONTRACTOR shall mean any person or entity entering into an agreement with a state agency contractor, whereby the contractor assigns or otherwise delegates to the person or entity, for consideration, all, or any part, of the performance required of the contractor under the terms of the contract between the state agency and the contractor. For purposes of these Regulations, the term subcontractor shall apply to any assignment of an agreement with a state agency, specifically including, but not limited to, a contract, a purchase agreement, and a lease.

BB. TAXPAYER IDENTIFICATION NUMBER (TIN) shall mean the individual's Social Security Number or the entity's Federal Identification Number.

CC. VENDOR shall mean an individual or entity that offers commodities or services for sale.

## **2. DISCLOSURE REQUIRED**

A. INFORMATION REQUIRED TO BE DISCLOSED. For purposes of the requirements of these Regulations, disclosure is required of any of the following, whether current or former:

- (1) member of the Arkansas General Assembly,
- (2) constitutional officer,
- (3) board or commission member,
- (4) state employee,
- (5) the immediate family member, including the spouse, of any of (1) - (4), or
- (6) any entity in which any person designated in (1) - (5):
  - (i) holds any position of control, or
  - (ii) holds any ownership interest of 10% or greater.

B. DISCLOSURE REQUIRED OF CONSTITUTIONAL OFFICERS AND SPOUSE TO BE MADE UNDER PENALTY OF PERJURY. Act 34 of 1999 provides that all disclosure required to be made by a constitutional officer, including a member of the General Assembly, or the spouse of a constitutional officer shall be made under penalty of perjury.

C. CONTRACTS AND EMPLOYMENT EXEMPT FROM DISCLOSURE REQUIREMENTS.

CONTRACTS AND SUBCONTRACTS LESS THAN \$25,000. Agencies are not required to obtain the disclosure listed in Section 2 from potential contractors, whether individuals or entities, for which the total consideration

is less than or equal to \$25,000. Contractors are not required to obtain the disclosure listed in Section 2 from potential subcontractors, whether individuals or entities, for which the total consideration is less than or equal to \$25,000. Agencies shall not split procurements into two or more contracts in order to circumvent the limit on the amount allowed to be purchased exempt from the disclosure requirements.

(1) OTHER CONTRACTS EXEMPT FROM DISCLOSURE REQUIREMENTS by Ark. Code Ann. § 19-11-203

- (a) Contracts with another governmental entity such as a state agency, public educational institution, federal governmental entity, or body of a local government.
- (b) Commodities procured from non-profit workshops authorized by Ark. Code Ann. § 19-11-501 et seq.
- (c) Farm products procured in accordance with Ark. Code Ann. § 19-11-203(14)(H).
- (d) Procurement of postage.
- (e) Payment of taxes.
- (f) Contracts with utilities defined, recognized, and regulated by the Arkansas Public Service Commission as a monopoly offering.
- (g) Medical items used for the treatment and diagnosis of patients, if procured through a group purchasing entity serving other public health institutions when substantial savings are available.
- (h) Purchase orders issued by agencies against Office of State Purchasing contracts.
- (i) Expenditures not involving public funds.
- (j) Published books, manuals, maps, periodicals, films, technical pamphlets, and copyrighted educational aids for use in libraries and for other informational or instructional purposes in instances in which other applicable law does not provide a restrictive means for the acquisition of them.
- (k) Services of visiting speakers, lecturers, and performing artists.
- (l) Works of art for museum and public display.

- (3) EXEMPTION FROM DISCLOSURE FOR WORK STUDY STUDENTS. Agencies shall not be required to obtain disclosure or approval of applicants for work study positions.

D. DISCLOSURE BY INDIVIDUALS.

- (1) DISCLOSURE GENERALLY. Except for contracts exempt from disclosure by Section 2 C and employment applicants exempt from disclosure by Section 2 D(2), agencies shall require any individual who desires to enter into, extend, amend, or renew a contract, lease, or purchase agreement, or obtain employment to disclose whether that individual is one of the persons designated in Section 2 A (1) - (5).
- (2) EMPLOYMENT - ONLY FINALISTS FOR POSITION REQUIRED TO DISCLOSE. Agencies are not required to obtain disclosure of all applicants for employment. Only those applicants who are chosen as finalists for the position are required to disclose. Agencies may elect to obtain disclosure from each of the finalists for the position at the time of the interview.

E. DISCLOSURE BY ENTITIES. Except for contracts exempt from disclosure by Section 2 C, agencies shall require any entity that desires to enter into, extend, amend, or renew a contract, lease, or purchase agreement to disclose whether any person designated in Section 2 A (1) - (5) holds any position of control or holds any ownership interest of 10% or greater.

F. DISCLOSURE BY SUBCONTRACTORS. Except for contracts exempt from disclosure by Section 2 C, agencies shall require any individual who, or entity that, desires to enter into, extend, amend, or renew a contract, lease, or purchase agreement to certify, in writing:

- (1) That, prior to entering any agreement with any subcontractor, as defined in these Regulations, for which the total consideration is greater than \$25,000, the contractor shall require the subcontractor to complete a **Contract and Grant Disclosure and Certification Form** (Pages 24 and 25).
- (2) That any agreement, current or future, between the contractor and a subcontractor for which the total consideration is greater than \$25,000 shall contain the following language:

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates the rule, regulation, or policy shall be subject to all legal remedies available to the contractor.

- (3) That no later than 10 days after entering into any agreement with a subcontractor for which disclosure is required, the contractor shall transmit to the agency a copy of the **Contract and Grant Disclosure and Certification Form** completed and signed by the subcontractor and a statement containing the dollar amount of the subcontract.
- (4) This disclosure requirement applies only to agreements entered into between subcontractors and the contractor who contracts with the state agency.

G. **MODIFIED DISCLOSURE REQUIRED FOR CHANGE ORDERS TO CAPITAL IMPROVEMENT PROJECTS.** If at the time a change order is processed against an original approved capital improvement project, all of the subcontractors are the same as those on the original approved project, the contractor may certify that fact on the change order in lieu of obtaining a new set of disclosure forms from each of the subcontractors. In the event the contractor enters into an agreement with a new subcontractor after the execution of the original approved project, the contractor is then responsible for insuring that disclosure has been obtained from the new subcontractor prior to processing and approval of the change order. All capital improvement construction contract changes orders that are subject to these Regulations shall contain the following language:

“I, the undersigned contractor, do hereby certify that I have reviewed my files and declare that there are / are not (circle one) new or additional subcontractors, which are required to be disclosed under this contract pursuant to Governor’s Executive Order 98-04. I have attached to this change order those disclosures required under the Order. I understand that any false information provided by, or omission made by, me may be grounds for termination due to a material breach of the contract.”

### 3. **RESPONSIBILITY OF AGENCY TO OBTAIN DISCLOSURE**

#### A. **DISCLOSURE MADE ON APPROVED DISCLOSURE FORMS.**

##### (1) **CONTRACTS**

Each agency shall inform any potential contractor, with the exception of those otherwise exempt from the disclosure requirements, of the disclosure required by Section 2 and shall provide the potential contractor with the appropriate disclosure form approved for that purpose by the Department of Finance and Administration, as amended from time to time. The current **Contract and Grant Disclosure and Certification Form** is located at Pages 24 and 25.

(2) EMPLOYMENT

Each agency shall inform all applicants of the disclosure required by Section 2. Agencies may comply with the disclosure requirement for employment by either of the following methods:

- (a) require that each applicant who is chosen as a finalist for the position complete and sign the **Employee Disclosure/Certification and Employment of Family Members Form** at the time s/he is interviewed by the agency; or
- (b) require that each applicant complete a checklist that identifies whether any family or business relationship prohibits the agency from employing that applicant or requires further approval (see sample checklist on Page 30 that may be included in the application). If the applicant checks “none of the above” on the checklist, no further disclosure is required, even if that applicant is hired for the position. If the applicant checks any item on the checklist, the agency must require any applicant who becomes a finalist to complete and sign the **Employee Disclosure/Certification and Employment of Family Members Form** at the time s/he is interviewed by the agency.

B. DISCLOSURE IS CONDITION OF CONTRACT. The agency shall inform each potential contractor who desires to enter into a contract that is not exempt from the disclosure requirements that disclosure is a condition of the contract and that the agency cannot enter into any such contract for which disclosure is not made.

C. CONTRACTOR'S DUTY TO OBTAIN DISCLOSURE OF SUBCONTRACTORS. The agency shall inform each potential contractor that:

- (1) disclosure is required to be a condition of any present or future subcontract for which the total consideration is greater than \$25,000;
- (2) the contractor must require any present or future subcontractor, for which the subcontract amount is greater than \$25,000, to complete and sign a **Contract and Grant Disclosure and Certification Form**; and
- (3) the contractor must transmit a copy of the subcontractor's disclosure form to the agency and a statement containing the dollar amount of the subcontract.

D. GOODS AND SERVICES FOR WHICH DISCLOSURE MAY BE OBTAINED AFTER PURCHASE. Certain goods and services are exempt from the requirement that disclosure be obtained prior to entering into the contract by virtue of the necessity for obtaining these goods or services expediently. Example: emergency procurements authorized by Ark. Code



Ann. § 19-11-233. The exemption applies only to the requirement that the agency obtain disclosure prior to entering the

contract. The agency is not exempt from the requirement of obtaining disclosure for any such contracts greater than \$25,000 as soon as reasonably possible and reporting any contract that would otherwise be subject to reporting to Department of Finance and Administration.

**4. PROHIBITED CONTRACTS; CONTRACTS REQUIRING APPROVAL.**

- A. PROFESSIONAL OR CONSULTANT SERVICES CONTRACTS BETWEEN AGENCIES AND STATE EMPLOYEES PROHIBITED. Except as otherwise permitted by law, agencies are prohibited from entering into, extending, amending, or renewing professional or consultant services contracts with state employees who are paid from extra help or regular salaries. None of the exceptions contained in Section 4 C allow agencies to enter into otherwise prohibited professional or consultant services contracts with state employees.
- B. PROFESSIONAL OR CONSULTANT SERVICES CONTRACTS BETWEEN AGENCIES AND CONSTITUTIONAL OFFICERS SUBJECT TO PRIOR APPROVAL. Constitutional officers, including members of the General Assembly, or their spouses may enter into professional or consultant services contracts with agencies only upon the prior approval of the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor.
- C. CONTRACTS SUBJECT TO COMPETITIVE SEALED BID OR REQUEST FOR PROPOSAL.
  - (1) An agency may enter into, extend, or renew a contract, lease, or grant with a constitutional officer, including members of the General Assembly, the spouse of a constitutional officer, or an entity in which the officer or spouse holds an ownership interest greater than ten percent (10%) if (i) the contract is the result of competitive sealed bidding or a request for proposal, and (ii) such officer played no role, directly or indirectly, in the administrative determination of specifications for the bid or request for proposal, in the administrative evaluation or consideration of bid or request for proposal, or in the administrative decision to accept the bid or request for proposal.
  - (2) An agency may enter into, extend, amend, or renew a contract, lease, or purchase agreement with a board or commission member, state employee, the immediate family member of any of these, or any entity in which any of these persons has an ownership interest of 10% or greater if the contract is the result of competitive sealed bidding or a request for proposal.

D. CONTRACTS AND GRANTS GREATER THAN \$25,000 AND NOT SUBJECT TO COMPETITIVE SEALED BIDDING OR REQUEST FOR PROPOSAL REQUIRE APPROVAL. An agency must obtain approval in order to enter into, extend, amend, or renew a contract, lease, or purchase agreement not subject to competitive sealed bidding or a request for proposal, as follows.

(1) If the total consideration for the contract is greater than \$25,000 the approval of the Chief Fiscal Officer of the State is required if the potential contractor or lessee is one of the following:

- (a) a state employee or the employee's immediate family member;
- (b) a board or commission member or the member's immediate family member, or
- (c) any entity in which a state employee or board or commission member, or an immediate family member of any of these:
  - holds any position of control, or
  - holds any ownership interest of 10% or greater.

(2) If the total consideration for the contract is greater than \$25,000 and the potential contractor, lessee, or grantee is a constitutional officer, including a member of the General Assembly, the spouse of a constitutional officer, or a corporation, limited liability company, partnership, or any other legal entity of which a constitutional officer or the officer's spouse has an ownership interest of at least ten percent (10%), the contract, lease, or grant must receive the prior approval of the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor.

E. SUBCONTRACTS. A constitutional officer including members of the General Assembly, the spouse of a constitutional officer, or a corporation, limited liability company, partnership, or any other legal entity of which a constitutional officer or the officer's spouse has an ownership interest of at least ten percent (10%) may not receive any subgrant, subcontract, or assignment of lease from a state agency unless:

- (1) the constitutional officer, spouse, or legal entity is disclosed as a subgrantee or subcontractor in the competitive bid or request for proposal; or
- (2) for contracts not requiring competitive bidding or a request for proposal, prior approval is obtained from the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor.

F. APPROVAL PROCEDURE. The following procedures shall apply to all contracts for which the prior approval of the Joint Budget Committee during legislative session, or the Legislative Council between sessions, and the Governor is required. The Office of State Procurement shall submit the request for approval of the contract to the Chief Fiscal Officer and to the

appropriate legislative body. The Chief Fiscal Officer, on behalf of the Governor, will notify the agency in writing whether the contract is approved or disapproved. The legislative body will notify the agency whether the contract is approved or disapproved. The agency may proceed with the contract upon receipt of the approval of both the Chief Fiscal Officer on behalf of the Governor and the appropriate legislative body.

**5. AGENCY APPROVAL OF CONTRACTS.**

- A. NO CONTRACT FOR COMMODITIES OR SERVICES GREATER THAN \$25,000 SHALL BE AWARDED, EXTENDED, AMENDED, OR RENEWED BY ANY AGENCY TO ANY CONTRACTOR WHO HAS NOT DISCLOSED AS REQUIRED IN SECTION 2, WITH THE EXCEPTION OF CONTRACTS IN SECTION 3 D FOR GOODS AND SERVICES FOR WHICH DISCLOSURE MAY BE OBTAINED AFTER PURCHASE.
- B. OFFICE OF STATE PROCUREMENT'S DUTY TO VERIFY THAT CONTRACTS NOT PROHIBITED. Prior to the award, extension, amendment, or renewal of any contract greater than \$25,000, the agency shall review the contract and verify:
  - (1) that the **Contract and Grant Disclosure and Certification Form** has been completed, signed, and included in the contract, and
  - (2) (a) that the contract is not prohibited or subject to approval; or
  - (b) if subject to approval, that the required approval has been obtained.
- C. REQUIRED CONTRACT LANGUAGE. Every contract greater than \$25,000 executed by an agency shall include any and all disclosures as a term of the contract. The required language may be inserted in the request for proposal, if the RFP is incorporated into the contract document that is executed by the agency. Agencies shall include the following language in any contract, lease, or any assignment of the terms of the agreement to any individual or entity:

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.

**6. PROHIBITED EMPLOYMENT; EMPLOYMENT REQUIRING APPROVAL.**

A. PROHIBITED EMPLOYMENT. The following employment is prohibited:

- (1) Constitutional officers, including members of the Arkansas General Assembly, are prohibited, after being elected and during the term for which elected, from entering into employment with any state agency or employment in any noncertified position with any public school district of this state, any vocational education school funded by the state, any education service cooperative, or the Cooperative Education Services Coordinating Council, unless the constitutional officer resigns prior to entering into the employment.
- (2) Former members of the Arkansas General Assembly and their spouses are prohibited from entering into employment with any state agency within twenty-four (24) months after the legislator leaves office in any job or position which was either (a) newly created by legislative action within the twenty-four months prior to the legislator leaving office, or (b) had a maximum salary level increase of more than fifteen percent (15%) authorized by legislative action within the twenty-four months prior to the legislator leaving office.

B. EMPLOYMENT REQUIRING APPROVAL OF LEGISLATURE AND GOVERNOR AND SUBJECT TO CONDITIONS OF EMPLOYMENT.

- (1) CONSTITUTIONAL OFFICERS EMPLOYED BY STATE AGENCY PRIOR TO ELECTION. Any constitutional officer, including a member of the General Assembly, who was employed by a state agency prior to being elected a constitutional officer, may continue such employment. However, the employment shall not be reclassified unless it is the result of a general reclassification affecting all positions of the class and grade equally nor shall the constitutional officer receive any pay increase after election, other than the cost of living increases authorized by the General Assembly, without the prior approval of the Joint Budget Committee during sessions, the Legislative Council between sessions, and the Governor.
- (2) HIRING SPOUSES OF CONSTITUTIONAL OFFICERS, INCLUDING MEMBERS OF THE GENERAL ASSEMBLY. Agencies may hire spouses of constitutional officers, including members of the General Assembly, after the spouse is elected to the constitutional office and during the term for which the spouse is elected, only upon the prior approval of the Joint Budget Committee during legislative sessions, or the Legislative Council between legislative sessions, and the Governor; provided, however, if the spouse's entry salary does not exceed the amount prescribed by level 4 of grade 13 of the state pay plan at Ark. Code Ann. § 21-5-209, as presently codified or as amended, no approval is required.

(3) SPOUSE OF CONSTITUTIONAL OFFICER EMPLOYED BY STATE AGENCY SUBJECT TO CONDITIONS. Any spouse of a constitutional officer, including members of the General Assembly, employed by a state agency, whether the employee spouse is hired prior to election or during the spouse's service in the constitutional office, is subject to the following conditions:

- (a) the employee spouse's position cannot be reclassified unless it is the result of a general reclassification affecting all positions of the class and grade equally;
- (b) the employee spouse cannot be promoted or transferred, while the spouse is serving in the constitutional office or within two (2) years after the spouse leaves office, without the prior approval of the Joint Budget Committee during sessions, or the Legislative Council between sessions, and the Governor; and
- (c) the employee spouse cannot receive any pay increase in excess of fifteen percent (15%) without the prior approval of the Joint Budget Committee during session, or the Legislative Council between sessions, and the Governor.

C. EMPLOYMENT REQUIRING APPROVAL OF STATE AGENCY DIRECTOR. Agencies may hire immediate family members, other than spouses, of constitutional officers and members of the General Assembly, with the prior written approval of the hiring state agency's director or the director's designee. Agencies may hire immediate family members, including spouses, of state employees and board and commission members, with the prior written approval of the hiring state agency's director or the director's designee.

D. PROCEDURES FOR OBTAINING APPROVAL.

- (1). Agencies may request approval to hire the spouse of a constitutional officer, including members of the General Assembly, or approval to promote or transfer the employee spouse while the spouse is serving in the constitutional office or within two (2) years after the spouse leaves office, or approval to increase the pay of the employee spouse in excess of fifteen percent (15%) by submitting the request to the Chief Fiscal Officer and to the Joint Budget Committee or the Legislative Council. The Chief Fiscal Officer, on behalf of the Governor, will notify the agency in writing whether the request is approved or disapproved. The legislative body will notify the agency whether the request is approved or disapproved. The agency may proceed with the employment, the promotion or transfer, or the increase in pay upon receipt of the approval of both the Chief Fiscal Officer on behalf of the Governor and the appropriate legislative body.

- (2) Agencies may develop their own procedures for obtaining approval from their agency director to hire an immediate family member (other than the spouse) of a constitutional officer or member of the General Assembly or to hire an immediate family member (including the spouse) of a state employee or board or commission member. These procedures should provide for written documentation to be maintained within the agency, including the **Employee Disclosure/Certification and Employment of Family Members Form** located on Page 26 of the Regulations, state application and/or resume, job description, and documentation to support reasons why other applicants were not selected.

**7. AGENCY APPROVAL OF EMPLOYMENT.**

A. NO INDIVIDUAL, WHO HAS NOT DISCLOSED AS REQUIRED IN SECTION 2, SHALL BE HIRED BY ANY AGENCY.

B. AGENCY'S DUTY TO VERIFY THAT EMPLOYMENT NOT PROHIBITED. Prior to hiring any individual, the agency shall review the application and verify:

- (1) that the applicant has completed and signed the **Employee Disclosure/Certification and Employment of Family Members Form** or that the applicant checked "none of the above" on the disclosure checklist; and
- (2)
  - (a) that the disclosure did not identify any of the individuals or entities designated in Section 6 A; or
  - (b) that the appropriate approval has been obtained, either from the proper legislative body and the Governor or from the state agency's director or his or her designee.

**8. RESPONSIBILITY OF AGENCY TO REPORT.**

A. GRANTS, CONTRACTS, OR LEASES AWARDED TO CONSTITUTIONAL OFFICER INCLUDING MEMBERS OF THE GENERAL ASSEMBLY, OR SPOUSE, OR TO ENTITY IN WHICH OFFICER OR SPOUSES HOLDS 10% OWNERSHIP INTEREST. The Office of State Procurement shall report, in writing, for transmission to the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor, if (i) any constitutional officer, including members of the General Assembly, or (ii) constitutional officer's spouse, or (iii) corporation, limited liability company, partnership, or any other legal entity of which a constitutional officer or the officer's spouse has an ownership interest of at least ten percent (10%) becomes the recipient of a grant, contract, or lease through competitive sealed bidding or a request for proposal, or if a grant, contract, or lease awarded prior to the person becoming a constitutional officer is renewed or extended.

B. CONTRACTS, LEASES, PURCHASE AGREEMENTS AWARDED TO STATE EMPLOYEES, BOARD OR COMMISSION MEMBERS OR THEIR IMMEDIATE FAMILY MEMBERS, OR TO LEGAL ENTITIES OWNED IN PART BY THEM. The Office of State Procurement shall report, in writing, for transmission to the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor if (i) any state employee or immediate family member, or (ii) board or commission member or immediate family member, or (iii) any legal entity of which a state employee or board or commission member, or the immediate family member of either, holds an ownership interest of at least ten percent (10%) becomes the recipient of a contract, or lease for which the total consideration is greater than Twenty-Five Thousand Dollars (\$25,000) and which is not subject to competitive bidding or a request for proposal.

C. EMPLOYMENT OF IMMEDIATE FAMILY MEMBERS. Any state agency that enters into employment with any of the following:

- (1) immediate family member, other than the spouse, of a constitutional officer, including members of the General Assembly;
- (2) immediate family member, including the spouse, of a state employee or a board or commission member shall report the employment, in writing, to the Office of State Procurement for transmission to the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor.

D. PROCEDURE FOR REPORTING. All required reports, as provided in this section 8, shall be made by each agency on a quarterly basis to the Department of Finance and Administration, Office of State Procurement, P.O. Box 2940 , Little Rock, Arkansas 72203. Reports shall be made no later than ten (10) business days following the end of each calendar quarter. Reports shall be transmitted electronically via the Web site at [accessarkansas.org/dfa/purchasing](http://accessarkansas.org/dfa/purchasing), unless the agency lacks the capacity to transmit electronically, in which case reports shall be made in paper format. Transmission of the report to the DFA Office of State Procurement shall satisfy the requirement that the report be made to the appropriate legislative body and the Governor. These reports that were previously made to the Office of Disclosure and Review are now made by the agency to the Office of State Procurement. The Office of State Procurement shall compile the reported information and transmit a copy to the appropriate legislative body and the Governor.

**9. SOLE SOURCE PROCUREMENT.**

- A. Agencies shall review all sole source contractual agreements to ensure compliance with the purpose and intent of Executive Order 98-04.
- B. All professional or consultant services contracts that indicate a sole source

shall include written justification for using the sole source and shall be included in the contract.

- C. The State Purchasing Director or a designee above the level of an agency purchasing official must determine in writing that it is not practicable to use other than the required or designated commodity or service.

**10. AGENCIES TO KEEP ADEQUATE RECORDS; PRESERVATION OF RECORDS; EXAMINATION OF RECORDS.**

- A. RECORDS REQUIRED. All records, including the required supporting documents, shall be considered a part of each agency contract, lease, or other agreement, and shall be retained in the files of the agency.
- B. PRESERVATION OF RECORDS. All records pertaining to transactions involving agency purchases made by the agency shall be preserved for a period of not less than 5 years from the expiration of the contract, and as required by Ark. Code Ann. § 13- 4-101 et seq.
- C. EXAMINATION OF RECORDS. All of the foregoing records shall be made available for examination upon request of an authorized representative(s) of the Department of Finance and Administration, Office of State Agency Internal Audit. The purpose of the examination is to verify that agencies have complied with Executive Order 98-04, Act 34 of 1999, and these Regulations.

**11. FAILURE TO DISCLOSE AND REPORT; VIOLATIONS.**

- A. Any willful and knowing violation of Act 34 of 1999 shall constitute a Class D felony. Venue for a judicial action for such a violation shall be in the county of the defendant's domicile.
- B. Violation of any rule or any of these regulations promulgated to administer Act 34 of 1999 or the failure of a constitutional officer including members of the General Assembly or spouse to disclose his or her interest in any contract, grant, or lease, or in any subcontract, subgrant, or assignment of lease as required by Act 34 of 1999 or by these regulations shall be grounds for voiding the contract, grant, lease agreement, subcontract, subgrant, or lease assignment and the constitutional officer or spouse may be required to refund any monies received thereunder.
- C. The Arkansas Ethics Commission is authorized to investigate any complaints or allegations of violations of Act 34 of 1999 and to make findings thereon. In the investigation of such matters, Act 34 specifically gives the Commission all authority and powers as granted to it under the provisions of Ark. Code Ann. §§ 7-6-217 and 7-6-218.



D. CONDITIONS WHICH CONSTITUTE MATERIAL BREACH OF CONTRACT. The failure of any contractor, whether individual or entity, to satisfy any of the following conditions, in addition to those conditions provided in existing law, may, at the option of the agency, be considered a material breach of the contract:

- (1) the person or entity has failed to disclose any information required by Section 2 A, or has otherwise violated any rule, regulation, or policy adopted pursuant to Executive Order 98-04;
- (2) the person or entity has failed to include as a condition in any agreement with any subcontractor the disclosure requirements of Section 2 F; or
- (3) the person or entity has failed to obtain and report disclosure obtained from a subcontractor at any time during the term of the contract.

E. OPTIONS AVAILABLE TO AGENCY UPON NON-FRAUDULENT OR NOT IN-BAD-FAITH BREACH BY CONTRACTOR. If it is determined that a contractor, not acting fraudulently or in bad faith, has failed to satisfy any of the

conditions in Section 12 A, an agency may, at its option:

(1) PRIOR TO AWARD OF CONTRACT.

- (a) Cancel the solicitation; or
- (b) Revise the solicitation to satisfy the conditions which were previously unsatisfied, and proceed with the contract, if the agency determines that doing so is in the best interests of the state.

(2) SUBSEQUENT TO AWARD OF CONTRACT.

- (a) Ratify and affirm the contract, if the agency determines that doing so is in the best interests of the state; or
- (b) Declare the contractor to be in default and terminate the contract.

F. RATIFICATION OF CONTRACT.

- (1) Prior to any determination that ratification is the appropriate option, the agency shall prepare a written justification for the determination that ratification of the contract is in the best interests of the state.
- (2) In connection with ratification of the contract, the agency shall:

- (a) Require the contractor to complete a Contract Disclosure and Certification Form containing any information required by Section 2 A that the contractor previously failed to disclose; or
- (b) Require the contractor to amend the subcontract to include as a condition in the subcontract the disclosure requirements of Section 2 F; or
- (c) Require the contractor to provide the subcontractor disclosure; and
- (d) Submit all contracts in Section 4 C(2) for which approval is required, to the Chief Fiscal Officer of the State for approval of the ratification of the contract. The request for approval should indicate that the contract was previously approved, that the agency subsequently discovered that the contractor failed to meet one or more of the disclosure and reporting requirements, and that the agency determined that ratification of the contract is in the best interests of the state. The request should include the written justification for the agency's determination that ratification is in the best interests of the state.

G. **TERMINATION OF CONTRACT.** The election of the option to terminate the

contract for any failure of a contractor to satisfy any of the conditions in Section 12 A should be determined in writing by the designated agency official. The procedures for resolution of contract and breach of contract controversies and any other applicable procedures contained in the State of Arkansas Purchasing Law and Regulations promulgated by the Office of State Procurement shall apply in the event of a termination of any contract as a result of breach of the contract as provided in Section 12 A.

H. **OPTIONS AVAILABLE TO AGENCY UPON FRAUDULENT OR BAD FAITH BREACH BY CONTRACTOR.** Upon discovery that a contractor, who has acted fraudulently or in bad faith, has failed to satisfy any of the conditions in Section 12 A, an agency may, at its option:

- (1) Declare the contract to be null and void; or
- (2) Direct the individual or entity awarded the contract to proceed with performance of the contract and pay such damages, if any, as may be appropriate if such action shall be in the best interests of the state.

I. **REPORT OF CONTRACTS RATIFIED, TERMINATED, OR DECLARED VOID.** All contracts which are ratified pursuant to Section 12

C, terminated pursuant to Section 12 D, or declared null and void pursuant to Section 12 E, shall be reported by the agency to the Department of Finance and Administration no later than 10 days following ratification, termination, or declaration of nullity by the agency.

**12. AGENCIES' NOTIFICATION TO EMPLOYEES OF EMPLOYEE DISCLOSURE OF BENEFITS REQUIREMENTS.**

- A. NOTICE TO EMPLOYEES. Each agency shall provide written notice to all finalists for agency employment of the employee disclosure requirements contained in Ark. Code Ann. §19-11-706, along with the civil and administrative remedies provided in Ark. Code Ann. §19-11-712, which may be imposed upon employees who breach these disclosure requirements, and the criminal penalties provided in Ark. Code Ann. § 19-11-702, upon conviction of a knowing violation of the disclosure requirements. The required **Employee Disclosure Requirements/Restrictions Notice** is located on Pages 27 and 28 of the Regulations.

- (1) Agencies shall provide the **Employee Disclosure Requirements/Restrictions Notice** to all finalists for agency employment. The Notice shall be considered to be part of the application, and the application will be deemed incomplete until the acknowledgment is signed and submitted by the finalist.
- (2) Agencies must maintain the employee's acknowledgement of receipt of the **Employee Disclosure Requirements/Restrictions Notice** in the employee's personnel file.
- (3) Agencies shall post a copy of Section 13 of the Regulations in a conspicuous place that is easily accessible to all employees, along with a sample reporting of benefits form (**Employee Disclosure Requirements Form**) and a notice that informs employees from whom in the agency they may obtain copies of the **Employee Disclosure Requirements Form**.

- B. DISCLOSURE OF BENEFIT RECEIVED FROM CONTRACT. All employees are required to report to the Director of the Department of Finance and Administration any benefit from any state contract with a business in which the employee has a financial interest, including:

- (1) Ownership of any interest or involvement in any business relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than one thousand dollars (\$1,000) per year, or its equivalent;
- (2) Ownership of more than a five percent (5%) interest in any business;  
or

- (3) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

For purposes of the reporting requirements of this section, "Employee" and "State agency," as defined in Ark. Code Ann. § 19-11-701, are adopted as follows. "Employee" includes an individual drawing a salary from a state agency, whether elected or not, and any nonsalaried individual performing personal services for any state agency. "State agency" means any office, department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, judicial, or legislative branch of this state.

Reports shall be made in writing addressed to Director, Department of Finance and Administration, P. O. Box 3278, Little Rock, Arkansas 72203-3278. Reports shall be considered complete if made on the **Employee Disclosure Requirements Form**, or if the report contains all of the information required on the **Employee Disclosure Requirements Form**. All reports made pursuant to this section by present state employees shall be transmitted to the Director no later than 30 days following the receipt of the benefit by the employee; provided, however, only one report is required for each contract pursuant to which a state employee is paid in installments, which report shall be transmitted no later than 30 days following the receipt of the first installment payment. All reports made pursuant to this section by a person who has a benefit from a state contract at the time that person becomes a state employee shall be transmitted to the Director no later than 30 days following the first day of state employment.

- C. **FAILURE TO DISCLOSE.** If any agency determines that an employee knew or should have known of a benefit from any state contract with a business in which the employee has a financial interest, but such employee failed to disclose such benefit to the Director of the Department of Finance and Administration, the agency shall immediately report the violation to the Director of the Department of Finance and Administration.

D. **REMEDIES AGAINST EMPLOYEES**

- (1) In addition to existing civil and administrative remedies, the Director of the Department of Finance and Administration may impose, after notice and an opportunity for a hearing, any one (1) or more of the following for failure of the employee to disclose:
  - (a) Oral or written warnings or reprimands;
  - (b) Forfeiture of pay without suspension;
  - (c) Suspension with or without pay for specified periods of time;  
and
  - (d) Termination of employment.
- (2) The value of anything received by an employee in breach of these restrictions shall be recoverable by the State.

- E. **CRIMINAL PENALTIES.** Pursuant to Ark. Code Ann. § 19-11-702, any employee or non-employee who knowingly fails to disclose any benefit shall be guilty of a felony and upon conviction shall be fined in any sum not to exceed ten thousand dollars (\$10,000) or shall be imprisoned not less than one (1) nor more than five (5) years, or shall be punished by both.

**13. AGENCIES' NOTIFICATION OF RESTRICTIONS ON EMPLOYMENT OF PRESENT AND FORMER EMPLOYEES.**

- A. **NOTICE TO EMPLOYEES.** Each Agency shall provide written notice to all finalists for agency employment of the restrictions on employment of present and former employees contained in Ark. Code Ann. §19-11-709, along with the civil and administrative remedies provided in Ark. Code Ann. §19-11-712, which may be imposed upon employees who breach these restrictions, and the criminal penalties provided in Ark. Code Ann. § 19-11-702, upon conviction of a knowing violation of the restrictions. The required **Employee Disclosure Requirements/Restrictions Notice** is located on Pages 27 and 28 of the Regulations.

- (1) The **Employee Disclosure Requirements/Restrictions Notice** shall be considered to be part of the application, and the application will be deemed incomplete until the acknowledgment is signed and submitted by the finalist.
- (2) Agencies must maintain the employee's acknowledgement of receipt of the **Disclosure Requirements/Restrictions Notice** in the employee's personnel file.
- (3) Agencies shall post a copy of Section 14 of the Regulations in a conspicuous place that is accessible to all employees.
- (4) If any agency determines that an employee has violated these Employment Restrictions, such Agency shall immediately report to the Director of the

Department of Finance and Administration.

- B. **CONTEMPORANEOUS EMPLOYMENT PROHIBITED.** No state employee involved in procurement for an Agency is allowed to also be the employee of any party contracting with the state agency by which the employee is employed.
- C. **RESTRICTIONS ON FORMER EMPLOYEES IN MATTERS CONNECTED WITH THEIR FORMER DUTIES.**

(1) No former employee shall knowingly act as a principal or agent for anyone other than the state in connection with any:

- (a) Judicial or other proceeding, application, request for a ruling, or other determination;
- (b) Contract;
- (c) Claim; or
- (d) Charge or controversy

in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the state is a party or has a direct and substantial interest.

(2) No former employee, within one (1) year after cessation of the former employee's official responsibility in connection with any:

- (a) Judicial or other proceeding, application, request for a ruling, or other determination;
- (b) Contract;
- (c) Claim; or
- (d) Charge or controversy

shall knowingly act as a principal or as an agent for anyone other than the state in matters that were within the former employee's official responsibility, where the state is a party or has a direct or substantial interest.

#### D. DISQUALIFICATION OF PARTNERS

(1) No person who is a partner of an employee shall knowingly act as a principal or as an agent for anyone other than the state in connection with any:

- (a) Judicial or other proceeding, application, request for a ruling, or other determination;
- (b) Contract;
- (c) Claim; or
- (d) Charge or controversy

in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise or that is the subject of the employee's official responsibility, where the state is a party or has a direct and substantial interest.

(2) No person who is a partner of a former employee shall knowingly act as a principal or as an agent for anyone other than the state where

such former employee is barred under the restrictions on former employees in matters connected with their former duties (see paragraph C).

E. **SELLING TO STATE AFTER TERMINATION OF EMPLOYMENT.** Former employees are prohibited (unless the former employee's last annual salary did not exceed \$10,500) from engaging in selling or attempting to sell commodities or services to the state for one (1) year following the date employment ceased. This prohibition does not preclude a former employee from accepting employment with private industry solely because his employer is a contractor with this state nor does it preclude an employee, a former employee, or a partner of an employee or former employee from filing an action as a taxpayer for alleged violations of Ark. Code Ann. §19-11-701, et seq.

F. **REMEDIES AGAINST EMPLOYEES**

(1) In addition to existing civil and administrative remedies, the Director of the Department of Finance and Administration may impose, after notice and an opportunity for a hearing, any one (1) or more of the following for breach of the employment restrictions:

- (a) Oral or written warnings or reprimands;
- (b) Forfeiture of pay without suspension;
- (c) Suspension with or without pay for specified periods of time; and
- (d) Termination of employment.

(2) The value of anything received by an employee in breach of these restrictions shall be recoverable by the State.

G. **CRIMINAL PENALTIES.** Pursuant to Ark. Code Ann. § 19-11-702, any employee or non-employee who knowingly violates these employment restrictions shall be guilty of a felony and upon conviction shall be fined in any sum not to exceed ten thousand dollars (\$10,000) or shall be imprisoned not less than one (1) nor more than five (5) years, or shall be punished by both.

**14. AGENCIES AFFECTED; VOLUNTARY DISCLOSURE.**

A. **AFFECTED AGENCIES.** The provisions of Executive Order 98-04, and these Regulations, shall apply to all agencies within the control of the Governor.

B. **VOLUNTARY COMPLIANCE ENCOURAGED OF EXEMPT PERSONS AND AGENCIES.** The following persons, agencies, and other entities not subject to the control of the Governor are encouraged to voluntarily comply with Executive Order 98-04 and these Regulations: Members of the Legislature, any employees of, or positions in the Legislative branch of

Arkansas State Government; the Justices of the Supreme Court, Judges of the Court of Appeals, Judges of the Circuit, Chancery or Circuit/Chancery Courts, Judges of the Inferior Courts, or any employee of, or position in the Judicial branch of Arkansas State government; elective officers of the State and any employee of the offices of Lieutenant Governor, Attorney General, Secretary of the State, State Auditor, Land Commissioner, and State Treasurer; members and staff of multi-member boards, commissions or committees that are exempt by law from the provisions of the "Arkansas Purchasing Law," Ark. Code Ann. § 19-11-201 et seq.; and employees of the Arkansas Highway and Transportation Department and the Arkansas Game and Fish Commission.

- C. **PROCEDURE FOR VOLUNTARY COMPLIANCE.** Any person, agency, or other entity desiring to voluntarily comply should contact the Office of State Procurement at P. O. Box 2940, Little Rock, Arkansas 72203, telephone number (501) 324-9316 or via web site at [www.state.ar.us/dfa/purchasing/index.html](http://www.state.ar.us/dfa/purchasing/index.html) to obtain a copy of these Regulations and to notify the Office of the person's or agency's intent to voluntarily comply.

**15. REGULATIONS SUPPLEMENTAL TO AND NOT IN ABROGATION OF CURRENT REQUIREMENTS OF AGENCIES IN BOTH LAW AND REGULATIONS.** No provision of these Regulations shall be considered to repeal any requirement of existing law or regulations promulgated pursuant to existing law. The agency requirements contained in these Regulations are supplemental to all current agency responsibilities.

Date: \_\_\_\_\_

\_\_\_\_\_  
RICHARD WEISS, Director  
Department of Finance and Administration

\_\_\_\_\_  
TIM LEATHERS, Deputy Director  
Department of Finance and Administration